

MONTGOMERY COUNTY, STATE OF MARYLAND

John E. Montreal

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Complainant

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**COMMISSION ON COMMON
OWNERSHIP COMMUNITIES**

v.

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**Case No. 41-08
July 31, 2009**

**Preakness Drive Homeowners
Association**

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Respondent

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MEMORANDUM DECISION AND ORDER

On May 5, 2009, the above-captioned case was heard by a hearing panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Hearing Panel"), pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended.

The duly appointed Hearing Panel now having considered the testimony and evidence presented, finds, determines and orders as follows:

Background

This action was filed by homeowner John E. Montreal ("Complainant") against his Association, Preakness Drive Homeowners Association ("Respondent" or "Association"). In his Complaint, the Complainant alleges that the Respondent failed to comply with various provisions of its Bylaws and Declaration, was inconsistent in architectural enforcement, and failed to comply with the terms of a previous settlement agreement between the parties. Pursuant to Section 10-B-13 of the Montgomery County Code, the Hearing Panel assigned to this dispute held a public hearing and received testimony from the Complainant (who is a past member of the Association's

Board of Directors) and from his witness, another homeowner in the Association; and from John Devine, who is a current member of the Association's Board of Directors, who represented and testified on behalf of the Respondent. The Hearing Panel also admitted numerous documents into evidence from both parties. These documents were duly considered by the Panel.

Based on the testimony and evidence received, the Hearing Panel makes the following Findings of Fact and Conclusions of Law related to the claims of Complainant:

1. The terms of the Bylaws and Declaration are binding on both the Respondent and Complainant, and these documents create a homeowners association as that term is defined by Section 11B-101(d) of the Real Property Article of the Code of Maryland.

2. The testimony and evidence presented at the hearing evidenced that various provisions of these documents have not been fully complied with by the Respondent.

3. The Respondent's violations of the Bylaws and Declaration include:

a. Article III, Section 1 of the Bylaws. A meeting of the Association's membership is to occur each year. The Respondent failed to have an annual meeting of its members in 2008 and thus far has not called a meeting for 2009. This meeting is necessary to transact the business of the Association, including the election of members to the Board of Directors.

b. Article VII, Section 2(c) of the Bylaws. The Respondent's Board of Directors is to prepare a yearly budget for the Association. The Respondent failed to

adopt a budget for fiscal year 2009 and instead relied on the continued budget for fiscal year 2008.¹

c. Article VI, Section 3 of the Bylaws. Generally, operational and administrative actions taken by the Association are to be authorized by a majority vote of the Board members at a meeting in which a quorum is present. No one Board member can act to bind the Respondent without the requisite approval as noted in this Bylaw provision. Complainant demonstrated at the hearing that legal services were requested and legal fees incurred at the sole direction of the then-Board President without approval of the Board. While this expenditure of legal fees may be a legitimate and recommended use of Respondent's funds, the correct approval for this action must be obtained by the Board of Directors in accordance with Article VI, Section 3 of the Bylaws.

d. Architectural Requirements. The Respondent is responsible for ensuring that its architectural requirements are known by its members and properly enforced. The evidence presented at the hearing documented that an architectural committee member made a representation in Respondent's newsletter that landscaping changes by a homeowner did not require the prior approval by the Respondent. While Respondent's Board member testified at that hearing that the Board of Directors did not adopt or authorize such a statement, there was no affirmative statement made by the Board of Directors to its members on this issue. The lack of an affirmative response by the Respondent on this issue created confusion among its members. Moreover, through testimony provided at the hearing by the Respondent's Board member, the

¹ Although the Declaration provides that if the Board fails to adopt a budget for a particular year, the previous year's budget will continue in effect, this creates potential problems in expenditures and cash flow for the Association and is not a practice recommended.

Respondent acknowledged that architectural issues had not been properly overseen or enforced. Pursuant to the clear terms of its documents, the Respondent is required to administer and enforce architectural controls in the Association. Action by the Respondent has been lacking and is clearly needed to address this issue.

e. Article XIII, Section 5 of the Bylaws. Books and records of the Association, including the names of the Board Members, are to be made available to the Respondent's members upon request pursuant to this Bylaw Section as well as under Section 11B-112 of the Maryland Homeowners Association Act. The evidence presented at the hearing documented that there were requests made by members for the names of the Board of Directors and contact information for the Respondent. The Respondent did attempt compliance with the request by listing the names of Board Members on its annual meeting notice. However, given that the annual meeting notice is distributed only once a year, additional action by the Respondent is necessary to respond to member requests for information and documentation.

4. The Respondent's Board of Directors, as shown through the testimony presented at the hearing, appeared to be making efforts to comply with the requirements of the Bylaws and Declaration. While these efforts by the Respondent's volunteer Board members to comply are noted, the Complainant has properly demonstrated the existence of several violations of the Bylaws and Declaration that require correction.

Order

In view of the foregoing, and based upon the record in this case, it is this 31st day of July, 2009 by the Commission on Common Ownership Communities,

ORDERED as follows:

1. Within sixty (60) days after the date of this Order, the Respondent must hold a meeting of its members to elect Board members. The Respondent must also place architectural control issues on the meeting agenda and provide its members with an opportunity to be heard on this issue. Respondent must notify each of its members of the meeting by mail at least 30 days prior to the meeting and include a copy of this Memorandum Decision and Order with each copy of the meeting notice.

2. Within one-hundred and twenty (120) days after the date of this Order, the Respondent, through its duly elected Board of Directors, must distribute proposed annual budgets to its members for the years 2009 and 2010, call a public meeting of the members to discuss the proposed budgets, and adopt these budgets. The Respondent must then provide a copy of the adopted budgets to the Respondent's members thirty (30) days prior to their effective dates.

3. Within ninety (90) days after the date of this Order, the Respondent through its duly elected Board of Directors, must affirmatively address architectural control issues by correcting the misstatement by the architectural committee member, clarifying its rules where necessary, distributing a copy of its proposed enforcement policy to all members for comment, and by then adopting a policy for enforcement. The comments received from its members at the meeting noted in 1 above must be considered by the Respondent's Board of Directors when addressing architectural rules and procedures.

4. Within ninety (90) days after the date of this Order, the Respondent must publish the names of its duly elected Board of Directors.

5. Within sixty (60) days after the date of this Order, Respondent must reimburse Complainant the \$50.00 filing fee he paid to the Commission for this case.

The foregoing was concurred in by Panel members Allen Farrar and Arthur Dubin.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after the date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.

Julianne E. Dymowski, Panel Chair
Montgomery County Commission on
Common Ownership Communities